

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

TYSHON JENKINS,)
Plaintiff,)
v.)
MONMOUTH COUNTY)
CORRECTIONAL INSTITUTION, et al.,)
Defendants.)

)

Civil Action No. 10-4973 (GEB)

ORDER

This matter comes before the Court upon the April 4, 2011 Report and Recommendation (“R&R”; Doc. No. 9) of the Hon. Tonianne J. Bongiovanni, U.S.M.J., recommending that Plaintiff Tyshon Jenkins’ (“Plaintiff”) Complaint be dismissed for Plaintiff’s failure to prosecute the matter or comply with this Court’s rules. Magistrate Judge Bongiovanni recounted Plaintiff’s noncompliance with the *sua sponte* March 4, 2011 Order requiring Plaintiff’s in-person appearance at the hearing to show cause why this matter should not be dismissed for Plaintiff’s failure to comply with the Local Rules requiring that contact information remain current (Doc. No. 7). Magistrate Judge Bongiovanni issued the Order to Show Cause as a result of the Order granting Plaintiff *in forma pauperis* status being sent to Plaintiff but returned as “undeliverable” on three occasions (Doc Nos. 4, 5, 6). Magistrate Judge Bongiovanni had *sua sponte* contacted the prison where Plaintiff had been housed and, after learning that Plaintiff had been released, sent a copy of the Order to Show Cause to Plaintiff’s forwarding address provided by the prison, but this Order to Show Cause similarly was returned as “undeliverable” (Doc. No. 8). Magistrate Judge Bongiovanni also noted that since the filing of the Complaint in this action on September

27, 2010, no correspondence or contact from Plaintiff has been received. This Court further notes that the R&R has twice been sent to Plaintiff and returned as “undeliverable” (Doc. No. 11) and “unclaimed” (Doc. No. 12).

In her R&R, Magistrate Judge Bongiovanni cited the authorization granted this Court pursuant to Federal Rule of Civil Procedure 37(b)(2) to dismiss an action as a result of a party’s failure to obey an Order entered under Rule 26(f) and applied the procedural history of this case to the six-factor test established by the Third Circuit in *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863 (3d Cir. 1984). Magistrate Judge Bongiovanni documented Plaintiff’s failure to provide even the most basic information to the Court, Plaintiff’s dilatory behavior in prosecuting his case, and Plaintiff’s inaction demonstrating at least knowing, if not willful, conduct in failing to participate in this case. After weighing the *Poulis* factors, Magistrate Judge Bongiovanni concluded that dismissal of Plaintiff’s Complaint is the appropriate sanction in light of his nonfeasance.

This Court has reviewed Magistrate Judge Bongiovanni’s R&R pursuant to Local Civil Rule 72.1, which provides that the Court “shall make a *de novo* determination of those portions [of the R&R] to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge.” L. Civ. R. 72.1(c)(2). In conducting its review, the Court was mindful that it “may consider the record developed before the Magistrate Judge, [and] mak[e] [its] own determination on the basis of that record.” *Id.*; *see also State Farm Indem. v. Fornaro*, 227 F. Supp. 2d 229, 231 (D.N.J. 2002).

Here, there were no objections to Magistrate Judge Bongiovanni’s R&R. Further, the Court concludes that the record before Magistrate Judge Bongiovanni was adequately developed,

the appropriate legal standard applied, and an appropriate sanction ultimately recommended. Accordingly, this Court hereby ADOPTS Magistrate Judge Bongiovanni's April 4, 2011 Report and Recommendation (Doc. No. 9). Having done so,

IT IS THIS 16th day of May, 2011, hereby

ORDERED that Plaintiff's Complaint (Doc. No. 1) is DISMISSED WITH PREJUDICE;

and it is further

ORDERED that the Clerk shall mark this case as CLOSED and send a copy of this Order to Plaintiff by ordinary mail to the forwarding address at 215 DeWitt Avenue, Asbury Park, NJ 07712.

s/ Garrett E. Brown, Jr.
GARRETT E. BROWN, JR., U.S.D.J.